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15 CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA

18 CALIFORNIA ENVIRONMENTAL
19 PROTECTION ASSOCIATION, a private
20 corporation,

21 Plaintiff,

22 v.

23 SONOMA SOIL BUILDERS, LLC
24 and DOES 1-10, inclusive,

25 Defendants.
26
27
28

CASE NO: 3:15-cv-04880 KAW

**CERTIFICATE OF SERVICE OF
COMPLAINT ON UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY AND UNITED STATES
DEPARTMENT OF JUSTICE**

15 NOV -2 P 3:44

DEPT. OF JUSTICE - ENRD
ENVIRONMENT DIVISION

1 CERTIFICATE OF SERVICE

2 I am employed in the County of Sonoma, State of California. I am over the age of
3 eighteen years and not a party to the within action. My business address is 100 E Street, Suite
4 318, Santa Rosa, CA 95404. On the date set forth below, I served the following described
document(s):

5 **COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL PENALTIES, RESTITUTION**
6 **AND REMEDIATION (Environmental - Federal Pollution Control Act - 33 U.S.C.**
7 **§§ 1251-1387)**

8 on the following parties by placing a true copy in a sealed envelope, addressed as follows:

9 Citizen Suit Coordinator
10 U.S. Dept. of Justice
11 Environmental & Natural Resource Division
12 Law and Policy Section
13 P.O. Box 7415
14 Ben Franklin Station
15 Washington, DC 20044-7415

16 Administrator
17 U.S. Environmental Protection Agency
18 Ariel Rios Building
19 1200 Pennsylvania Avenue, N.W.
20 Washington, D.C. 20460

21 [X] (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class
22 mail, for collection and mailing at Santa Rosa, California, following ordinary business practices.
23 I am readily familiar with the practices of Law Office of Jack Silver for processing of
24 correspondence; said practice being that in the ordinary course of business, correspondence is
25 deposited with the United States Postal Service the same day as it is placed for processing.

26 [] (BY FACSIMILE) I caused the above referenced document(s) to be transmitted by Facsimile
27 machine (FAX) 707-528-8675 to the number indicated after the address(es) noted above.

28 I declare under penalty of perjury, under the laws of the State of California, that the
foregoing is true and correct, and that this declaration was executed on October 26, 2015 at Santa
Rosa, California.


Lisa H. Mador

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19 PROTECTION ASSOCIATION, a
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21 Plaintiff,
22 v.

23 SONOMA SOIL BUILDERS, LLC
24 and DOES 1-10, inclusive,

25 Defendants.

CASE NO.

**COMPLAINT FOR INJUNCTIVE
RELIEF, CIVIL PENALTIES,
RESTITUTION AND REMEDIATION
[Environmental - Clean Water Act -
33 U.S.C. § 1251 *et seq.*]**

26 NOW COMES plaintiff CALIFORNIA ENVIRONMENTAL PROTECTION
27 ASSOCIATION, a private corporation ("CEPA") by and through its counsel, and for its
28 Complaint against Defendants SONOMA SOIL BUILDERS, LLC and DOES 1-10, inclusive,
(collectively referred to hereafter as "SSB") alleges:

I. NATURE OF THE CASE

1. This is a citizens' suit for relief brought by CEPA under the Federal Pollution Control Act, also known as the Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*, specifically CWA §§ 301, 402, and 505, 33 U.S.C. §§ 1311, 1342 and 1365, to prevent CEPA from repeated and ongoing violations of the CWA. These violations are detailed in the Supplemental Notice of

1 Violations and Intent to File Suit dated April 30, 2015 ("CWA NOTICE") made part of the
2 pleadings of this case and attached hereto as **EXHIBIT A**.

3 2. SSB is the responsible owner, operator and/or manager of the Sonoma Soil Builders soil
4 storage, blending and soil manufacturing facility located at 5900 Pruitt Avenue in Windsor,
5 Sonoma County California ("Facility") where the alleged violations of the CWA are occurring.
6 CEPA contends SSB is routinely violating the CWA by discharging pollutants, including but not
7 limited to total suspended solids, pH, chemical oxygen demand, biochemical oxygen demand,
8 potassium, sulfate, oil and grease, lead, iron and zinc, from the Facility and various point sources
9 within the Facility, to waters of the United States including Pool Creek, a tributary of the Russian
10 River, without a National Pollutant Discharge Elimination System ("NPDES") permit, in
11 violation of CWA § 301(a), 33 U.S.C. § 1311(a).

12 3. The Facility, operating and covered under Standard Industrial Codes ("SIC") 0711 (Soil
13 Preparation Services) and 2875 (Fertilizers, Mixing only), is required to be covered by
14 California's General Industrial Storm Water Permit for Industrial Storm Water Discharges,
15 NPDES General Permit No. CAS000001 [State Water Resources Control Board] Water Quality
16 Order No. 92-12-DWQ (as amended by Water Quality Orders 97-03-DWQ and 2014-0057-
17 DWQ) issued pursuant to CWA § 402(p), 33 U.S.C. § 1342(p) (hereafter, "General Permit"),
18 Failure to obtain coverage under the General Permit is a violation of CWA § 402(p), 33 U.S.C.
19 § 1342(p).

20 4. CEPA seeks declaratory relief, injunctive relief to prohibit future violations, the
21 imposition of civil penalties, and other relief for CEPA's violations of the CWA as alleged in
22 this Complaint.

23 **II. PARTIES TO THE ACTION**

24 5. Plaintiff California Environmental Protection Association ("CEPA") is now, and at all
25 times relevant to this Complaint was, a private corporation duly organized under the laws of the
26 State of California with its main office at 1275 Fourth Street, Suite 141, Santa Rosa, California.
27 The specific purpose of CEPA is to protect, enhance, and help restore the surface and ground
28 waters of California including its rivers, creeks, streams, wetlands, vernal pools, aquifers and

1 associated environs, biota, flora and fauna, and to educate the public concerning environmental
2 issues associated with these environs. To further these goals, CEPA actively seeks federal and
3 state agency implementation of the CWA and other laws and, where necessary, directly initiates
4 enforcement actions on behalf of itself and its members. Members of CEPA live in Sonoma
5 County and use and enjoy the waters into which SSB has caused, is causing, and will continue
6 to cause pollutants to be discharged. Members of CEPA have interests in the Laguna de Santa
7 Rosa and the Russian River which have been, are being, or may be adversely affected by SSB's
8 violations of the CWA as alleged in this Complaint. Said members use the affected waters for
9 recreation, sports, boating, kayaking, swimming, hiking, photography, nature outings, and the
10 like. The relief sought will redress the injury in fact to CEPA and its members and the likelihood
11 of future injury and interference with the interests of said members.

12 6. CEPA is informed and believes, and on such information and belief alleges, that
13 Defendant SONOMA SOIL BUILDERS, LLC is now, and at all times relevant to this Complaint
14 was, a limited liability corporation organized under the laws of the state of State of California,
15 with its main address at 3245 Cobblestone Drive, Santa Rosa, California. Further, that
16 SONOMA SOIL BUILDERS, LLC owns and operates the Facility located at 5900 Pruitt
17 Avenue, Windsor, Sonoma County, California.

18 7. CEPA is informed and believes, and on such information and belief alleges, that
19 Defendants DOES 1-10 inclusive, respectively, are now, and at all times relevant to this
20 Complaint were, persons, partnerships, corporations and entities, who are, or were, responsible
21 for, or in some way contributed to, the violations which are the subject of this Complaint or are,
22 or were, responsible for the maintenance, supervision, management, operations, or insurance
23 coverage of the Facility and operations taking place at the Facility as identified in the CWA
24 NOTICE and this Complaint. The names, identities, capacities, and functions of defendants
25 DOES 1 - 10, inclusive, are presently unknown to CEPA. CEPA shall seek leave of court to
26 amend this Complaint to insert the true names of said DOES defendants when the same have
27 been ascertained.

28

1 **III. JURISDICTIONAL ALLEGATIONS**

2 8. Under 33 U.S.C. § 1251(e), Congress declared its goals and policies with regard to public
3 participation in the enforcement of the CWA. 33 U.S.C. § 1251(e) provides, in relevant part:

4 Public participation in the development, revision, and enforcement of any
5 regulation, standard, effluent limitation, plan or program established by the
6 Administrator or any State under this chapter shall be provided for,
encouraged, and assisted by the Administrator and the States.

7 9. Subject matter jurisdiction is conferred upon this Court by CWA § 505(a)(1), 33 U.S.C.
8 § 1365(a)(1), which states in relevant part,

9 “... any citizen may commence a civil action on his own behalf - against any
10 person . . . who is alleged to be in violation of (A) an effluent standard or
11 limitation. . . or (B) an order issued by the Administrator or a State with
respect to such a standard or limitation ...”

12 For purposes of CWA § 505, “the term ‘citizen’ means a person or persons having an
13 interest which is or may be adversely affected.” (33 U.S.C. § 1365(g)).

14 10. Members and supporters of CEPA reside in the vicinity of, derive livelihoods from, own
15 property near, and/or recreate on, in or near, and/or otherwise use, enjoy and benefit from the
16 waterways and associated natural resources into which SSB allegedly discharges pollutants, or
17 by which SSB’s operations at the Facility adversely affect those members’ interests, in violation
18 of the protections embedded in the NPDES Permitting program and the General Permit, CWA
19 § 301(a), 33 U.S.C. § 1311(a), CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), and CWA § 402, 33
20 U.S.C. § 1342. The health, economic, recreational, aesthetic and environmental interests of
21 CEPA and its members may be, have been, are being, and will continue to be adversely affected
22 by SSB’s unlawful violations as alleged herein. CEPA contends there exists an injury in fact to
23 its members, causation of that injury by SSB’s complained of conduct, and a likelihood that the
24 requested relief will redress that injury.

25 11. Pursuant to CWA § 505(c)(3), 33 U.S.C. § 1365(c)(3), a copy of this Complaint has been
26 served on the United States Attorney General and the Administrator of the Federal EPA.

27 12. Pursuant to CWA § 505(c)(1), 33 U.S.C. § 1365(c)(1), venue lies in this District as the
28 location of the Facility where the alleged illegal discharges occurred, as well as the source of the

1 violations complained of in this action, are located within this District.

2 **IV. GENERAL ALLEGATIONS**

3 13. CEPA incorporates by reference all the foregoing including EXHIBIT A as though the
4 same were separately set forth herein.

5 14. SSB owns and operates the Facility which engages in a broad range of soil storage, soil
6 blending and manufacturing activities. Operations at the Facility take place primarily outdoors
7 on a site that slopes towards one or more storm drains and the navigable waters of the Laguna
8 de Santa Rosa and the Russian River, all of which are in close proximity to the Facility.
9 Because the real property on which the Facility is located is subject to rain events, the range of
10 pollutants discharged from the Facility and identified in the CWA NOTICE and this Complaint
11 can discharge to the Laguna de Santa Rosa and the Russian River.

12 15. CEPA alleges that pollutants are discharged from the Facility during and after storm
13 events. SSB contends that all sheeted run-off is captured by drain inlets which prevents the
14 runoff from reaching any channel from which it can be discharged to a surface water. However
15 based on information and belief, and on visual observations by members of CEPA, it is likely
16 that during major storm events sheeted run-off to the west drainage area reaches the sump pump
17 which conveys water to the drainage ditch adjacent to the Facility which discharges into Pool
18 Creek, a tributary of the Laguna de Santa Rosa and the Russian River, both waters of the United
19 States.

20 16. CEPA alleges that SSB has no individual NPDES Permit authorizing discharges from
21 point sources at the Facility; and, that for at least eighteen (18) months after opening the Facility,
22 SSB failed to apply for coverage under the General Permit. Further, even after obtaining
23 coverage under the General Permit, SSB failed to implement Best Available Technology
24 Economically Achievable ("BAT") and Best Conventional Pollutant Control Technology
25 ("BCT") to control the discharge of pollutants in storm water at the Facility.

26 17. CEPA alleges that SSB's current Storm Water Pollution Prevention Plan ("SWPPP") does
27 not contain a detailed drainage plan, prepared by a hydraulic engineer, with flow calculations,
28 pipe sizing and other standard information needed to determine site drainage, including wash

1 water flow from the equipment storage and maintenance area.

2 18. Table 4 of SSB's SWPPP lists K-rails, wattles and bunkers as containment structures for
3 potential pollution sources, i.e. the piles of ingredients and manufactured soils which have the
4 potential to come into contact with storm water runoff. However, visual inspection by members
5 of CEPA discloses that these structures have deteriorated and are inadequate to actually contain
6 contaminated storm water runoff. Page 3 of the SWPPP states, "There are no structural control
7 measures at the Facility". This is in apparent contradiction with the list of containment structures
8 found in Table 4, and suggests that SSB's SWPPP was prepared in a pro forma manner to satisfy
9 formal requirements without reflecting the actual conditions at the Facility.

10 19. CEPA alleges that SSB has been operating the Facility without providing the Regional
11 Water Quality Control Board, North Coast Region ("RWQCB") with any documented results
12 of past facility run-off sampling, in violation of the CWA and the General Permit. It is also
13 unclear how contributions from the Facility are distinctly identified in samples from commingled
14 drain inlets in the west drainage area conveying run-off from adjacent facilities.

15 20. The language in SSB's SWPPP describing Best Management Practices ("BMPs")
16 employed to prevent pollutant runoff is conclusory and qualified as "to the extent feasible", with
17 minimal or a complete lack of specific detail, e.g., "All stored industrial materials that can be
18 readily mobilized by contact with storm water have been covered to the extent feasible. All
19 stored non-solid industrial materials or wastes (e.g., particulates, powders, shredded paper, etc.)
20 that can be transported or dispersed by the wind or contact with storm water has been contained
21 to the extent feasible." (SWPPP at p.6) The extent to which the SWPPP qualifies its
22 identification of BMPs based on feasibility and economic practicability, as well as the lack of
23 specific detail, renders SSB's SWPPP illusory.

24 21. The Facility is located adjacent to Mark West Creek to the south, Pruitt Creek and Pool
25 Creek to the north, Airport Creek and Pool Creek to the northeast, and the Laguna de Santa Rosa
26 and Russian River to the west – all waters of the United States. The Russian River is listed
27 under the CWA as impaired for Nutrients (D.O., Nitrogen, Phosphorous), Pathogens (Indicator
28 Bacteria), Metals (Mercury), Misc. (Temperature), and Sediment (Siltation). Receiving water

1 concerns for the Facility are nitrogen, phosphorous and sediment, which are analyzed for as N+N
2 (nitrogen), total phosphorous and TSS (sediment). All illegal discharges and activities
3 complained of in this Complaint occur in close proximity to the above-identified waters and
4 during storm events are highly likely to discharge into the said waters.

5 22. The RWQCB has determined that the watershed areas and affected waterways identified
6 in the CWA NOTICE and this Complaint are beneficially used for: water contact recreation,
7 non-contact water recreation, fish and wildlife habitat, preservation of rare and endangered
8 species, fish migration, fish spawning, navigation, and sport fishing.

9 23. Information available to CEPA indicates the continued existence of unlawful discharges
10 of pollutants from the Facility into a water of the United States, specifically Pool Creek, the
11 Laguna de Santa Rosa and the Russian River, in violation of the General Permit and the CWA.

12 **V. STATUTORY AND REGULATORY BACKGROUND**

13 24. CWA §301(a), 33 U.S.C. § 1311(a) prohibits the discharge of any pollutant into waters
14 of the United States unless such discharge is in compliance with various enumerated sections
15 of the CWA. Among other things, CWA § 301(a) prohibits discharges not authorized by, or in
16 violation of, the terms of an individual NPDES permit or a general NPDES permit issued
17 pursuant to CWA § 402, 33 U.S.C. § 1342.

18 25. CWA § 402(p), 33 U.S.C. § 1342(p) requires SSB to apply for coverage under the
19 General Permit for potential industrial storm water discharges from the Facility to the above
20 referenced waters.

21 26. CWA § 502(6), 33 U.S.C. § 1362(6), defines a pollutant as “dredged spoil, solid waste,
22 incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological
23 materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and
24 industrial, municipal and agricultural waste discharged into water.”

25 27. CWA § 402(p), 33 U.S.C. § 1342(p), establishes a framework for regulating storm water
26 discharges under the NPDES program. States with approved NPDES permitting programs are
27 authorized under this section to regulate storm water discharges through permits issued to
28 dischargers and/or through the issuance of a single, statewide general permit applicable to all

1 storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. EPA has
2 authorized the State Water Resources Control Board ("SWRCB") to issue NPDES permits
3 including general NPDES permits in California.

4 28. The SWRCB elected to issue a statewide general permit for industrial discharges, and
5 issued the General Permit on or about November 19, 1991, modified the General Permit on or
6 about September 17, 1992, reissued the General Permit on or about April 17, 1997, and amended
7 the General Permit on or about April 1, 2014, pursuant to CWA § 402(p).

8 29. In order to discharge storm water lawfully in California, industrial dischargers must
9 comply with the terms of the General Permit or have obtained an individual NPDES permit and
10 complied with its terms.

11 30. Violators of the CWA are subject to an assessment of civil penalties of up to \$37,500 per
12 day/per violation for all violations, pursuant to CWA §§ 309(d) and 505, 33 U.S.C. §§ 1319(d),
13 1365. *See also* 40 C.F.R. §§ 19.1-19.4.

14 31. The RWQCB has established water quality standards in the Water Quality Control Plan
15 for the San Francisco Bay Basin, generally referred to as the Basin Plan. The Basin Plan includes
16 a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic
17 substances in concentrations that are lethal or that produce other detrimental responses in aquatic
18 organisms". The Basin Plan provides that "[w]aters shall not contain suspended material in
19 concentrations that cause nuisance or adversely affect beneficial uses".

20 32. The U.S. EPA adopted the National Toxics Rule ("NTR") on February 5, 1993 and the
21 California Toxics Rule ("CTR") on May 18, 2000. *See* 40 C.F.R. part 131. When combined
22 with the beneficial use designations in the Basin Plan, these Rules contain water quality
23 standards applicable to this discharge. The SWRCB on April 26, 2000 adopted the *Policy for*
24 *Implementation of Toxics Standard for Inland Surface Waters, Enclosed Bays, and Estuaries of*
25 *California* that contains requirements for implementation of the NTR and CTR. Pursuant to 40
26 C.F.R. part 131, the CTR "criteria are legally applicable in the State of California for inland
27 surface waters, enclosed bays and estuaries for all purposes and programs under the Clean Water
28 Act."

33. The General Permit requires the implementation of BMPs that will reduce or eliminate discharges of pollutants from storm water. The General Permit also requires the preparation, implementation, review and update of an adequate SWPPP, the elimination of all non-authorized storm water discharges, and the development and implementation of an adequate monitoring and reporting program for a facility and its operations. The SWPPP must identify potential pollutants on the site, the source of those pollutants, and the means to manage those sources to reduce storm water pollution. CEPA contends SSB has failed to develop and implement an adequate SWPPP to protect adjacent waters from illegal discharges of pollutants from the Facility. Failure to develop and implement an adequate SWPPP pursuant to the General Permit is a violation of CWA § 402(p), 33 U.S.C. § 1342(p).

34. The affected waterways detailed in this Complaint and in the CWA NOTICE are navigable waters of the United States within the meaning of CWA § 502(7), 33 U.S.C. § 1362(7).

VI. VIOLATIONS

35. The enumerated violations are detailed in the CWA NOTICE and below, designating the section of the CWA violated by the described activity.

VII. CLAIM FOR RELIEF

Failure to Comply with the Regulations Set Forth in the General Permit for Stormwater Discharges Associated With Industrial Activities (Violations of 33 U.S.C. § 1342(p))

36. CEPA realleges and incorporates by reference the allegations of Paragraphs 1 through 35 as though fully set forth herein including all allegations in the CWA NOTICE. CEPA is informed and believes, and on such information and belief alleges, as follows:

37. A discharger involved with industrial activity must obtain a NPDES permit. CWA § 402(p)(2)(B), 33 U.S.C. § 1342(p)(2)(B). SSB initially operated the Facility for at least eighteen (18) months without applying for coverage under the General Permit or receiving a separate NPDES Permit for its industrial discharges as required by the CWA. Since obtaining coverage under the General Permit, SSB continues to violate the CWA as evidenced by its failure to comply with the regulations set forth in the General Permit by failing to develop and implement

1 an adequate SWPPP to prevent illegal discharges of pollutants from the Facility.

2 38. As described in the CWA NOTICE and herein, pursuant to CWA § 402(p), 33 U.S.C. §
3 1342(p), and 40 C.F.R. § 122.26, CEPA alleges SSB to be in violation of an effluent standard
4 or limitation under the CWA and/or an order issued by the State with respect to such standard
5 or limitation. By law and by the terms of the General Permit, violations of the General Permit
6 are violations of the CWA (40 C.F.R. § 122.41(a)).

7 39. CEPA contends SSB's violations as alleged in this Complaint are ongoing, and will
8 continue after the filing of this Complaint. CEPA alleges herein all violations which may have
9 occurred or will occur prior to trial, but for which data may not have been available or submitted
10 or apparent from the face of the reports or data submitted by SSB to the SWRCB, the RWQCB,
11 or to CEPA prior to the filing of this Complaint. CEPA will amend this Complaint if necessary
12 to address SSB's State and Federal violations of the General Permit which may occur after the
13 filing of this Complaint. Each of SSB's violations in excess of State and Federal standards has
14 been and is a separate violation of the CWA.

15 40. CEPA alleges that without the imposition of appropriate civil penalties and the issuance
16 of appropriate equitable relief, SSB will continue to violate the General Permit as well as State
17 and Federal standards with respect to the enumerated discharges and releases alleged herein and
18 described in the CWA NOTICE. Further, that the relief requested in this Complaint will redress
19 the injury to CEPA and its members, prevent future injury, and protect the interests of its
20 members that are or may be adversely affected by SSB's violations of the General Permit.

21 41. CEPA alleges that continuing violations of the CWA by SSB at the Facility will
22 irreparably harm CEPA and its members, for which harm CEPA and its members have no plain,
23 speedy or adequate remedy at law.

24 **VIII. RELIEF REQUESTED**

25 WHEREFORE, CEPA prays that the Court grant the following relief:

26 42. Declare CEPA to have violated and to be in violation of the CWA;

27 43. Issue an injunction ordering SSB to immediately operate the Facility in compliance with
28 the NPDES permitting requirements in the CWA;

1 44. Enjoin SSB from discharging pollutants from the Facility and to the surface waters
2 surrounding the Facility until such time as SSB has developed and implemented an adequate
3 SWPPP, including the following elements:

4 A. A Site Plan for the Facility, to scale, developed by a licensed engineer, containing the
5 following elements:

- 6 i. Buildings, permeable and impermeable areas and stock piles;
- 7 ii. A topographic map and boundary survey of the Facility site including perimeter
8 areas subject to run-on from nearby facilities;
- 9 iii. Storm water flow paths to a terminus on or off site showing the exact path of
10 storm water likely to make contact with material stock piles on the Facility
11 including discharge and sampling locations. In particular, clarifying whether any
12 storm water flow enters Drain Inlet ("DI") 18 and/or any other drain inlets, and
13 how SSB can support its claim that no water can reach the sump pump which
14 conveys water to the drainage ditch adjacent to the Facility which discharges into
15 Pool Creek, a tributary of the Russian River;
- 16 iv. A detailed drainage plan with flow calculations, pipe sizing and other standard
17 information needed to determine site drainage;
- 18 v. Wash water flow path from equipment storage and maintenance areas;
- 19 vi. A description of the filter socks referenced in the current SWPPP as used during
20 the rainy season on drain inlets DI-15 through DI-20 and on DI-23 and DI-24,
21 including the manufacturer, material components, loading capacity and period of
22 effective use until replacement is required.

23 B. Update the current SWPPP to include BMPs consistent with the Site Plan developed
24 pursuant to paragraph 44.A. above to ensure consistency with the requirements of the
25 General Permit.

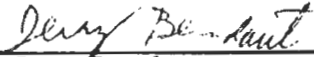
26 C. Sampling of storm water at least four (4) times per year over each of the next five (5)
27 years at "first flush", the first significant rain after "first flush," the first significant rain
28 after April 1, and the second significant rain after April 1;

- 1 45. Order SSB to pay civil penalties of \$37,500 per day/per violation for each violation of the
2 Act pursuant to CWA §§ 309(d) and 505(a), 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R.
3 §§ 19.1-19.4;
- 4 46. Order SSB to take appropriate actions to restore the quality of United States waters
5 impaired by its activities on the Facility;
- 6 47. Order SSB to pay CEPA's reasonable attorneys' fees and costs (including expert witness
7 fees), as provided by 33 U.S.C. § 1365(d) and applicable California law; and,
- 8 48. Award such other and further relief as may be just and proper.

9
10 DATED: October 22, 2015

LAW OFFICE OF JACK SILVER

11
12 By: 
13 Jack Silver

14 
15 Jerry Bernhaut

16 Attorney for Plaintiff
17 CALIFORNIA ENVIRONMENTAL PROTECTION
18 ASSOCIATION
19
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EXHIBIT A

Law Offices of
Hans W. Herb



Via Certified Mailing - Return Receipt

April 30, 2015

Germon Medeiros
Sonoma Soil Builders, LLC.
3245 Cobblestone Dr.
Santa Rosa CA 95404

**Re: SUPPLEMENTAL
Notice of Violations and Intent to File Suit Under the federal Water Pollution Control Act
("Clean Water Act")**

Dear Owners, Operators and/or Facility Managers:

NOTICE

This Notice is provided on behalf of California Environmental Protection Association ("CEPA") in regard to violations of the Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that CEPA believes are occurring at the Sonoma Soil Builders, LLC facility located at 5900 Pruitt Avenue in Windsor, California. Notice is being sent to you as the responsible owners, officers, operators or managers of these properties and facilities. This Notice addresses the violations of the CWA, including violation of the terms of the General California Industrial Storm Water Permit and unlawful discharge of pollutants from the Sonoma Soil Builders, LLC facility in Windsor into Pool Creek, a tributary of the Russian River (which is CWA § 303(d) listed as impaired for sediment, temperature, and bacteria).

This Notice amends and supplements a previous Notice which was served on Sonoma Soil Builders, LLC on June 30, 2014.

CWA § 505(b) requires that 60 days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the CWA, this Notice provides notification of the violations that have occurred, and continue to occur at the Sonoma Soil Builders, LLC facility. Consequently, Sonoma Soil Builders, LLC (the "Discharger") is placed on formal notice by CEPA that after the expiration of sixty (60) days from the date of this Notice, CEPA will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, National Pollutant

PO Box 970, Santa Rosa, California 95402

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Discharge Elimination System ("NPDES") permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with requirements set forth in the Code of Federal Regulations and the North Coast Regional Water Quality Control Board ("RWQCB") Water Quality Control Plan or "Basin Plan".

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

Based on information thus far received, CEPA believes pollutants are discharged from the alleged Soil manufacturing activities at the site, including but not limited to, total suspended solids, pH, chemical oxygen demand, biochemical oxygen demand, potassium, sulfate, oil and grease, lead, iron, and zinc. CEPA contends the Discharger previously had no individual facility NPDES permit for these discharges, and had failed to apply for coverage and comply with the General Industrial Storm Water Permit, NPDES Permit No. CA S000001, State Water Resources Control Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ ("General Permit"), for at least eighteen months after opening its Windsor facility. The Discharger is in violation of the CWA's prohibition with regard to discharging a pollutant from a point source to a water of the United States, in this instance the Laguna de Santa Rosa and the Russian River, pursuant to CWA § 301(a), 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f).

Even after obtaining coverage under the terms of the General Permit, the Discharger failed to prepare and implement a Stormwater Pollution Prevention Plan ("SWPPP"), failed to develop and implement a Monitoring and Reporting Program, and failed to implement Best Available Technology Economically Achievable ("BAT") and Best Conventional Pollutant Control Technology ("BCT") to control the discharge of pollutants in storm water at the Sonoma Soil Builders, LLC facility.

CEPA believe that these violations will continue until the Discharger implements a SWPPP and Monitoring and Reporting Program, and demonstrates (following sampling and testing following storm events) that its implementation of Best Management Practices ("BMPs") is effectively controlling storm and non-storm water discharges from the site.

2. *The activity alleged to constitute a violation.*

Operations at Sonoma Soil Builders, LLC site include a broad range of alleged soil storage, soil blending and manufacturing activities. The work, covered under Standard Industrial Code ("SIC") 0711 (Soil Preparation Services) and 2875 (Fertilizers, Mixing only) is conducted solely outdoors. The outdoor work takes place on a site that slopes toward one or more storm drains and the waters of the Laguna de Santa Rosa and the Russian River. Both the storm drains and the navigable waters of

the Laguna de Santa Rosa and the Russian River are in close proximity to the respective site. Because the property on which the site is located is subject to rain events, the range of pollutants identified above can discharge to the Laguna de Santa Rosa and the Russian River.

To properly regulate these activities and control the discharge of these types of pollutants, the State Water Resources Control Board requires industrial facilities to obtain an individual NPDES permit or seek coverage under the General Permit (or obtain exemption under the terms of the General Permit from its requirements), and to comply with all terms of said permit. Review of the public record by CEPA reveals that the Discharger did not apply for the required permit coverage under the CWA for the facility until approximately October 14, 2014, well after CEPA submitted its first Notice of Intent to Sue in June of 2014.

Furthermore, Sonoma Soil Builders, LLC does not have a current and properly prepared Storm Water Pollution Prevention Plan (SWPPP) on file with the North Coast Regional Water Quality Control Board.

3. *The person or persons responsible for the alleged violation.*

The entity responsible for the alleged violations is Sonoma Soil Builders, LLC (referred to herein as "the Discharger"), including those of its parent companies, owners, operators and employees responsible for compliance with the CWA.

4. *The location of the alleged violation.*

The locations of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA are the permanent addresses of Sonoma Soil Builders, LLC facility at 5900 Pruitt Avenue in Windsor, California, and include the adjoining navigable waters of the Laguna de Santa Rosa and the Russian River, respectively - both waters of the United States.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

The range of dates covered by this Notice is from at least April 20, 2013, until at least January 31, 2015. CEPA may from time to time update this Notice to include all violations which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is California Environmental Protection Association, 930 Shiloh Rd. Bldg #39 Suite A, Windsor, CA 95492. CEPA is dedicated to protect, enhance and help restore the groundwater and surface water environs of California including, but not limited to, its rivers, creeks,

streams, wetlands, vernal pools, and tributaries. CEPA may be contacted via email through its attorneys.

CEPA has retained legal counsel with respect to the issues set forth in this Notice. All communications should be addressed to:

Hans W. Herb, Esq.
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Email: hans@tankman.com

STATUTORY BACKGROUND

CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States unless such discharge is in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual NPDES permit or a general NPDES permit issued pursuant to CWA § 402(p), 33 U.S.C. § 1342. CWA § 402(p), 33 U.S.C. § 1342(p), establishes a framework for regulating storm water discharges under the NPDES program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. EPA has authorized California's State Water Resources Control Board to issue NPDES permits, including general NPDES permits in California.

The State Water Resources Control Board elected to issue a statewide general permit for industrial discharges, and issued the General Permit on or about November 19, 1991, modified the General Permit on or about September 17, 1992, and reissued the General Permit on or about April 17, 1997, pursuant to CWA § 402(p).

In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and complied with its terms.

The General Permit contains certain absolute prohibitions. Discharge Prohibition Order Section A(1) of the General Permit prohibits the direct or indirect discharge of materials other than storm water ("non-storm water discharges"), which are not otherwise regulated by a NPDES permit, to waters of the United States. Discharge Prohibition Order Section A(2) prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation Order Section C(1) prohibits storm water discharges to any surface or groundwater that adversely impacts human health or the environment. Receiving Water Limitation Order Section C(2) prohibits storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Quality Control Board Basin Plan.

In addition to absolute prohibitions, the General Permit contains a variety of substantive and procedural requirements that dischargers must meet. Facilities discharging, or having the potential to discharge, storm water associated with industrial activity that have not obtained an individual NPDES permit must apply for coverage under the General Permit by filing a NOI. The General Permit requires existing dischargers to file NOIs before March 30, 1992.

Dischargers must also develop and implement a SWPPP which must comply with the standards of BAT and BCT. The SWPPP must, among other requirements:

- Identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges [Permit Section A(2)]. BMPs must implement BAT and BCT [Permit Section B(3)].
- Include a description of individuals and their responsibilities for developing and implementing the SWPPP [Permit Section A(3)]; a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity [Permit Section A(4)]; a list of significant materials handled and stored at the site [Permit Section A(5)]; and, a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, and a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur [Permit Section A(6)].
- Include a narrative assessment of all industrial activities and potential pollutant sources at the facility [Permit Section A(7)]. Include a narrative description of the BMPs to be implemented at the facility for each potential pollutant and its source, and consider both non-structural BMPs (including "Good Housekeeping") and structural BMPs where non-structural BMPs are not effective [Permit Section A(8)].
- Conduct one comprehensive site compliance evaluation by the facility operator in each reporting period (July 1- June 30), with SWPPP revisions made, as appropriate, and implemented within 90 days of the evaluation [Permit Section A(9)].

The General Permit requires dischargers to eliminate all non-storm water discharges to storm water conveyance systems other than those specifically set forth in Special Condition D(1)(a) of the General Permit and meeting each of the conditions set forth in Special Condition D(1)(b).

As part of their monitoring program, dischargers must identify all storm water discharge locations that produce a significant storm water discharge, evaluate the effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control measures set out in the SWPPP are adequate and properly implemented. Dischargers must conduct visual observations of these discharge locations for at least one storm per month during the wet season (October through May) and record their findings in their Annual Report [Permit Section B(14)].

Dischargers must also collect and analyze storm water samples from at least two storms per year in compliance with the criteria set forth in Permit Section B(5). Dischargers must also conduct dry season visual observations to identify sources of non-storm water pollution in compliance with Permit Section B(7).

Permit Section B(14) of the General Permit requires dischargers to submit an "Annual Report" by July 1 of each year to the executive officer of the relevant Regional Water Quality Control Board. Permit Section A(9)(d) of the General Permit requires the dischargers to include in the annual report an evaluation of the dischargers' storm water controls, including certifying compliance with the General Permit. *See also* Permit Sections C(9), C(10) and B(14).

The EPA has established Parameter Benchmark Values ("EPA Benchmarks") as guidelines for determining whether a facility discharging storm water has implemented the requisite BAT and BCT. (65 Fed. Reg. 64746, 64767 (Oct. 30, 2000)). California Toxics Rule limitations are also applicable to all non-storm water and storm water discharges. (40 C.F.R. part 131). The RWQCB has established applicable water quality standards. This Basin Plan includes a narrative toxicity standard and a narrative oil and grease standard. The Basin Plan provides that "[waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses." The Basin Plan establishes limits on metals, solvents, pesticides and other hydrocarbons.

SPECIFIC VIOLATIONS

CEPA contends as follows:

1. Between at least April 20, 2013 and October 14, 2014, the Discharger violated the CWA, the RWQCB's Basin Plan and the Code of Federal Regulations by reason of discharging pollutants to waters of the United States without an individual NPDES permit.

2. Between at least April 20, 2013, and the present, the Discharge has been operating without compliance with the General Permit, or in substantial and material violation of the General Permit.

3. To date, the Discharger has failed to develop, implement and submit to the Regional Water Quality Control Board for approval, an appropriate Storm Water Pollution Prevent Plan (SWPPP), in violation of the Board's Order No. 97-03-DWQ.

4. The Discharger provided misleading and/or false information on its Notice of Intent to Comply with the Terms of the WQ Order No. 97-03-DWQ, submitted on October 14, 2014, including that it listed an inaccurate SIC code. A SIC Code of 46 was listed on its Industrial Permit application form, which is "Pipelines, except natural gas." CEPA believes that the accurate SIC codes relative to the Discharge operations at the Windsor facility are 2875 and 0711, based on Sonoma Soil Builders' primary income stream.

5. The Discharger provided misleading and/or false information on its Notice of Intent to Comply with the Terms of the WQ Order No. 97-03-DWQ, submitted on October 14, 2014, including that the Discharger indicated that its facility's storm water discharges were entirely contained within a "closed system" and that no discharges ever left the Discharger's property. Several CEPA associates and others personally observed the facility's storm water discharges flowing into a tributary of Pool Creek, which eventually flows into the Russian River. There is no "closed loop" system at the facility.

6. CEPA further contends that the Discharger failed to report the above-referenced storm water dischargers and further failed to implement best management practices (BMPs) to contain said discharges. In fact, an inspector for the North Coast Regional Quality Control Board visited the site on or about November 18, 2014, and determined that the facility had "deficient BMP implementation." Specifically, Paul Kieran noted that numerous uncovered piles were sitting directly within the facility's storm water drainage system, and that attempts to block drop inlets and put K-rails along the southern edge of feedstock piles had created a "lake" all around the piles. The feedstocks were leaching into the standing water, which he noted drained through the storm drain system.

7. On December 2, 2014, Paul Kieran re-inspected the facility and noted that while some of the soil amendment piles had been covered, other remained uncovered. He indicated that gutters needed to be placed on an adjacent building that had been supplying much of the run-on storm water which was creating the water quality concern. CEPA believes that the Discharger has failed to implement this required remedial measures.

8. CEPA also believes that the Sonoma Soil Builders, LLC facility in Windsor is neither properly bermed, nor operated to ensure that storm and non-storm water discharges are properly contained, controlled, and/or monitored.

9. In addition, CEPA believes the Discharger has provided additional false information to regulators in connection with its industrial storm water activities and has had other violations that can only be fully explored once discovery and investigation has been completed. Hence, to the extent possible, CEPA includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

The violations discussed herein, impacting the Laguna de Santa Rosa and the Russian River, are derived from eye witness reports and records publicly available, or from records in the possession and control of the Discharger. Furthermore, CEPA contends these violations are continuing. Halting the discharge of pollutants to these important regional waterways is critical if they are to sustain both maritime and natural habitats for bird, animal, and plant life.

REMEDIAL MEASURES REQUESTED

CEPA believes that implementation of the following remedial measures are necessary in order to bring the Discharger into compliance with the CWA and reduce the biological impacts of its non-compliance upon public health and the environment surrounding the Sonoma Soil Builders, LLC facility.

1. Prohibition of the discharges of pollutants including, but not limited to total suspended solids, pH, chemical oxygen demand, biochemical oxygen demand, potassium, sulfate, oil and grease, lead, iron, and zinc from the soil manufacturing operations at the facilities.
2. Compliance with the terms and conditions of the General Permit, and BMPs detailed in the EPA's "Industrial Stormwater Fact Sheet."
3. Compliance with the storm water sampling, monitoring and reporting requirements of the General Permit.
4. Sampling of storm water at least four (4) times per year over each of the next five (5) years: at "first flush"; the first significant rain after "first flush"; the first significant rain after April 1; and the second significant rain after April 1.
5. 100% of the discharge from the Sonoma Soil Builders, LLC facility must be discharged through discrete conveyances.
6. Any discharge from the Sonoma Soil Builders, LLC facility to waters of the United States must be sampled during the four (4) sampling events identified in paragraph #4 above.
7. Preparation and submittal to the RWQCB of a "Reasonable Potential Analysis" for the Sonoma Soil Builders, LLC site and their operations.

8. Preparation of an updated SWPPP for the site, including a monitoring program, with a copy provided to CEPA.

CONCLUSION

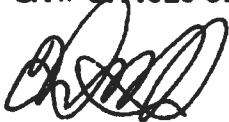
CWA §§ 505(a) (1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a) (1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4.

The violations set forth in this Notice affect the health and enjoyment of members of CEPA who reside and recreate in the affected communities. Members of CEPA use the affected watersheds for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource are specifically impaired by the Discharger's violations of the CWA as set forth in this Notice.

CEPA believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period, or shortly thereafter, CEPA has cause to file a citizen's suit under CWA § 505(a) against the Discharger for the violations of the CWA identified and described in this Notice. During the 60-day notice period, CEPA is willing to discuss effective remedies for the violations identified in this Notice. However, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. CEPA does not intend to delay the filing of a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,

LAW OFFICES OF HANS W. HERB



Hans W. Herb

Copies to:

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**Executive Director
State Water Resources Control Board
P.O. Box 100
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**Eric Holder, U.S. Attorney General
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**Regional Administrator
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**Executive Officer
North Coast Regional Water Quality Control Board
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